IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6401 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

THAKORE GOBARJI SURAJI

Versus

GANPATBHAI AMULAKHBHAI BAROT & ANR.

Appearance:

MR Ravindra Shah for Petitioner

MR MC BAROT for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 21/09/96

ORAL JUDGEMENT

1. Heard learned counsel for the parties. Though this case has a chequered history, and the counsel for the petitioner Shri Ravindra Shah has taken all the pains to give out the detailed chequered history of this case, but I do not consider it appropriate to give out the chequered history of this case in the judgment. I am

adopting this course for the reason that the chequered history is not necessary to be given out for the disposal of this Special Civil Application as the matter is only to be considered whether the decision which has been given by the Gujarat Revenue Tribunal which is under challenge in this Special Civil Application is correct or not. I consider it appropriate only to give out the facts in the judgment which are relevant for the decision of this case.

2. The challenge has been made by the petitioner to the order of the Gujarat Revenue Tribunal made in Revision application No. TEN.B.A. 244/80 dated 28th September, 1984.

3. On 1-2-1960, Tenancy case No.53 of 1960 was filed by the respondent no.1 herein Shri Ganpatbhai Amulakbhai Barot in the court of Mamlatdar. This case was filed by the respondent no.1 under sec.70(b) of the Bombay Tenancy and Agricultural Lands Act, 1948, (hereinafter referred to as the Act, 1948). In this case, the petitioner and the respondent no.2, Shaikh Bachumiya Bapumiya were also the parties. The aforesaid case has been dismissed on 18th November, 1960 and it has been held therein that the petitioner is a tenant in cultivation of the land of Survey No.1697/2. Against the order dated 18-11-1960, the respondent no.1, herein filed the appeal before the appellate authority and the appeal came to be dismissed by the said authority on 28th March, 1961. It is not in dispute that against the order of the appellate authority aforesaid, no revision or any other proceedings were taken by the respondent no.1 or respondent no.2. The disputed land in this case is of Survey nos.1683, 1697/1 and 1697/2. In the aforesaid proceedings, the claim of the respondent no.1 was that he was a tenant of these three pieces of the land. In those proceedings, the petitioner has admitted in the deposition that he was merely a servant and not the tenant of the suit land. The respondent no.1 Ganpatbhai Amulakbhai Barot filed a Civil Suit being Civil Suit No.77/62 in the court of Civil Judge, Vijapur for a declaration that he was a tenant of the suit land and consequently for the relief restraining the present petitioner and the respondent no.2 from taking any possession from him. In the said suit, a compromise was effected between the petitioner and the respondent no.1 on 5-1-1960 admitting and acknowledging the tenancy right of the present respondent no.1 Ganpatbhai Amulakbhai Barot. In February, 1964, the proceedings under sec. 32G of the Act, 1948 were initiated by the Mamlatdar, but those proceedings were dropped on 3-2-1964 holding therein that the respondent

no.1 though was entitled to purchase the land, but since the land owner i.e. the respondent no.2 was holding a certificate under sec. 88C of the Act, 1948, the sale was postponed. The respondent no.1 made an application on 8-7-1967 under sec. 32-U read with sec. 32G of the Act, 1948 for declaring him as a deemed purchaser of the land in question and for fixation of the price thereof. In those proceedings, the respondent no.2 was only a party. The Mamlatdar by his judgment and order dated 10th December, 1971 declared the respondent no.1 to be the excluded tenant of the land comprised in Survey No.1697/1 and 1697/2. It appears that the respondent no.2 took over the forcible possession of the suit land from the respondent no.1 and as such, the respondent no.1 had approached the Assistant Collector for summary eviction of the respondent no.2 under sec. 84 of the Act, 1948. The Assistant Collector ordered to evict the respondent no.2 from the suit land by his judgment and order dated 28th December, 1974. In those proceedings it appears that the petitioner was also the party therein, but the Mamlatdar did not pass any order against him. The petitioner therefore had taken the matter before the Gujarat Revenue Tribunal by filing a Revision application being Revision application no. TEN.B.A. 768/74. The Tribunal has allowed the revision application and set aside the order of the Assistant Collector of the summary eviction of the respondent no.2. The matter has been brought by the respondent no.1 before this court by filing Special Civil Application No.378 of 1975. This court under its order dated 1-3-1977 set aside the order of the Tribunal and remanded the matter back to the Tribunal with specific direction to decide the issue as to who is the tenant in respect of the land of Survey Nos. 1683, 1697/1 and 1697/2. This court has further directed the Tribunal to send the matter for recording evidence and for his finding to the Mamlatdar who may forward it to the Tribunal. This Court has further directed that the Tribunal on receipt of the report and after hearing the parties, should decide the issue of tenancy according to the correct legal principles. The Tribunal, therefore, registered the matter as application no. TEN.B.A. 302/77 and by its judgment and order dated 28-6-1978 sent the matter to the Mamlatdar after framing the issue for recording evidence and for sending the report with its finding. The Mamlatdar thereupon recorded the evidence and send his findings dated 6-2-1979 with his report dated 8-2-1979. The Mamlatdar has decided the matter against the petitioner i.e. the petitioner was not accepted to be the tenant of the land in question. The Tribunal under its order dated 28th September, 1978 decided the matter and the findings of

the Mamlatdar given on 6-2-1979 were accepted and it has been held that Govindbhai Amulakbhai, the respondent no.1 herein was the tenant of the suit land on 1-4-1967 and is entitled to purchase the same under the relevant provisions of the Act, 1948. The order of the Assistant Collector of eviction of the respondent no.2 from the land in question has also been held to be legal and proper. Hence, this Special Civil Application before this court.

4. The counsel for the petitioner made those very submissions which have been made by him before the revisional court. Firstly, it has been contended that the judgment of the Mamlatdar in the Tenancy case No.53 of 1960 has become final since against the order of the appellate authority, the matter was not taken further, and as such, the same operates as res judicata. It has next been submitted that the Nokarnama dt. 7-7-1950 is not duly proved, and therefore, it cannot be relied upon.

5. On the other hand, the counsel for the respondent has submitted that the judgment of the Tribunal is perfectly legal and justified and does not call for interference of this court under Article 227 of the Constitution of India. It is a question of fact which has been decided by both the courts and as such, this court should not interfere in the matter. The plea of res judicata which has been taken by the petitioner before the revisional court was not tenable and the same has rightly been decided by the Tribunal against him. So far as the other question regarding the Nokarnama is concerned, the Tribunal has decided the matter on the basis of the petitioner's own admissions.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The Tenancy case no.53/60 has been filed by the respondent no.1 for declaring him to be the tenant of the land in question. It is not in dispute that the respondent no.2 was made party therein as the owner of the land and the petitioner has joined there also. In those proceedings, the petitioner has made a statement that he was merely a servant and not the tenant of the suit land and Mamlatdar dismissed the application for declaration filed by the respondent no.1. The respondent no.1 has taken the matter in appeal before the appellate authority and the same has been dismissed. Despite of the aforesaid admission, the appellate authority while dismissing the appeal filed by the respondent no.1 has made a declaration of the fact that the petitioner was a tenant of the suit land. The petitioner has not filed an

application for declaring himself to be the tenant of the land in dispute. Not only this, but it was not his claim in the proceedings filed by the respondent no.1 under sec.70(b) of the Act, 1948. On the contrary, he has made admission and maintained his status only as of a servant of respondent no.2. The Tribunal has rightly held that the aforesaid declaration made by the Deputy Collector in those proceedings initiated by the respondent no.1 under sec.70(b) of the Act, 1948 in favour of the petitioner was without jurisdiction. There was no occasion for the appellate authority to make such a declaration in favour of the petitioner. It is certainly a decision beyond the jurisdiction of the said authority. The petitioner has raised the issue of res judicata. However, the petitioner had finally submitted a purshis to the effect that the issue of tenancy be sent for decision to the Tribunal. This purshis filed by the petitioner concludes the issue of res judicata and this plea of res judicata which has been raised again before the Tribunal was not open to him. This plea has specifically been given up by the petitioner before this court in writing. The petitioner has agreed that the matter may be remanded to the Tribunal for deciding afresh regarding the issue of the tenancy i.e. whether the petitioner is the tenant of the land in dispute or the respondent no.1. In view of this fact, the petitioner is estopped from raising this plea. The Tribunal has rightly held that the petitioner has waived this plea and this plea therefore cannot be raised at this stage. The Tribunal has further rightly held that it cannot go beyond the decision of this court given in Special Civil Application No.378 of 1975 decided on 1-3-1977. The remand has been made on the issue to claim of the tenancy rights and the petitioner has given up his plea regarding this issue.

7. The net result of the aforesaid discussion is that the plea of res judicata raised by the petitioner has rightly been rejected by the Tribunal and the finding which has been given in respect thereof by it does not call for any interference of this court.

8. So far as the second issue is concerned, it is not in dispute that in the pahani patraks right from 1923 upto the year 1952-53 the name of the petitioner has not been entered therein as a tenant. The petitioner has not produced the pahani patraks for the year 1953-54 and 1954-55. In the pahani patraks of the year 1955-56 and 1956-57, the name of the respondent no.1 is not there as a tenant. Otherwise in all the pahani patraks preceding those two years and after that, either the father of the respondent no.1 or he himself has been shown as a tenant

of the land. In addition to that, the admission of the petitioner made in the proceedings of Tenancy case no.53/60, the discussion in respect thereof has already been made above, his status was only of a servant. Further reference has been made of the admission made by the petitioner on 19th August, 1960 before the Extra Aval Karkun, Vijapur who was at that time exercising the powers of the Mamlatdar under the Act, 1948 that the reply which has been submitted by him in the Tenancy case no.53 of 1960 and the statement made therein are correct. Not only that, in regular civil suit no.17/62, the petitioner and the respondent no.1 had submitted a compromise purshis in which he has admitted that he has no tenancy right over the three fields in dispute and the respondent no.2 is a tenant of the suit land. This compromise purshis has been admitted before the Joint Civil Judge (J.D.) Vijapur on 5-1-1963. It is true that in those proceedings, the petitioner has denied the aforesaid three admissions and the counsel for the petitioner has contended also before this court that the admissions are the results of the misrepresentation or fraud or undue influence but it is too difficult to accept this contention. The court has put a question to the counsel for the petitioner whether the petitioner had after making of the first admission in tenancy case no.53/60 has ever challenged the same on the ground of misrepresentation, fraud or undue influence either by taking recourse of the criminal case or by filing any application in the tenancy case itself or by filing a civil suit for declaration and he fairly conceded that no such course has been taken again for the admission which has been made by the petitioner in compromise purshis in civil suit no.70/62. The counsel for the petitioner admitted that the petitioner has not taken any course to criminal court or has not filed any application in the civil court itself or suit for declaration. These admissions are made in 1960s and at this stage now it is nothing but only a mere defence that the same has been taken by misrepresentation or committing fraud or exercising undue influence. Such a plea can be manufactured for taking the benefits, but the Tribunal has rightly observed that the petitioner has no respect for truth. The Tribunal has rightly concluded that on the basis of the aforesaid three admissions of the petitioner himself, the claim of the respondent no.1 as tenant of the three disputed fields is established. The Tribunal has considered further aspect that this claim of the respondent no.1 further fortifies from the supporting evidence of the entries in the pahani patraks right from 1922-23 in which the name of the father of the respondent no.1 is shown as the tenant of the suit land. The entry

of the name of the petitioner is only for two years i.e. 1955-56 and 1956-57 is explained by the admissions of the petitioner himself. No evidence has been produced whatsoever by the petitioner how he has come in the possession of the land in the year 1955-56 and 1956-57. The Tribunal has rightly held that the possession cannot be taken from the tenant in the year 1955-56 or 1956-57 without following the procedure prescribed in the Act, 1948. The oral evidence produced by the petitioner has also been considered and the Tribunal has held that those witnesses are not reliable as they have not stood to the test of cross-examination. The another aspect regarding the Nokarnama is concerned, the Tribunal has held that the same stand proved by the admission of the petitioner himself. The other fact has been noticed by the Tribunal that in the proceedings initiated by the Mamlatdar under sec.32G of the Act, 1948 in which the petitioner was also one of the party, the respondent no.1 was held to be the tenant of the suit land comprised in Survey Nos. 1697/1 and 1697/2. However, at that time, the respondent no.2 had obtained a certificate under sec.88C of the Act, 1948 and the proceedings were dropped. In respect of the land of Survey No.1683, the Mamlatdar has held that the land owner is a widow and therefore, the statutory purchase under sec.32G of the Act is postponed. Against this finding no appeal or other proceeding has been taken by the petitioner. Reference has also been taken of the fact that the petitioner has himself filed an application before the Mamlatdar on 3-7-1961 for restoration of the possession alleging therein that the respondent no.1 has forcefully entered in the possession of the suit land. This further goes to show that the respondent no.1 was in possession of the suit land on relevant date on or about 3-7-1961. Otherwise, there was no occasion for the petitioner to approach to the Mamlatdar under sec.29 of the Act, 1948. So the Tribunal has recorded the finding of fact and I do not find any perversity in the finding which calls for interference of this court under Article 227 of the Constitution of India.

9. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged.

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